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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/804,403
Filing Date: March 12, 2001
Appellant(s): STRAND ET AL.

Alec D. Smyczek
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 13, 2009 appealing from the Office action mailed September 5, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

There is an appeal pending regarding U.S. Application No. 10/300,355 and there was an interference regarding U.S. Patent No. 6,360,513. The interference number is: 105,529

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

As indicated throughout the prosecution, in the office actions previous to the Final rejection mailed September 5, 2008, the Hayashi et al. reference has been indicated by U.S. Patent No. 6074097 and has been maintained through out prosecution to reject claims 16, 93, 131, 138, 139 and 141. In the Final rejection mailed September 5, 2008, the Hayashi et al. reference was still maintained for the rejection of claims 16, 93, 131, 138, 139 and 141, but inadvertently referred to the Hayashi et al. U.S. Patent Number as 5074097. This was a typographical error that was only present in the Final Rejection, mailed September 5, 2008. Therefore, the correct U.S. Patent number is reflected in the rejection below:

Claim 16, 93, 131, 138, 139 and 141 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 6-9, 14-18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137 and 142-147 and in further view of Hayashi et al. (US 6074097).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|--------------|-----------------------|---------|
| US 6,327,754 | BELMONT et al. | 12-2001 |
| US 6,257,763 | STOLMEIER et al. | 7-2001 |
| US 5,131,121 | HERRINGTON, JR et al. | 7-1992 |
| US 6,287,001 | BUCHMAN | 9-2001 |
| US 5,442,837 | MORGAN | 8-1995 |
| US 4,759,642 | VAN ERDEN et al. | 7-1998 |
| US 5,364,189 | KUGE et al. | 11-1994 |
| US 6,074,097 | HAYASHI et al. | 6-2000 |
| US 5,725,312 | MAY | 3-1998 |
| US 4,846,585 | BOECKMANN et al. | 7-1989 |

The reference to Hayashi et al. was inadvertently indicated in the Final Rejection, mailed September 5, 2008 as having U.S. Patent No. 5074097. As indicated above, the correct patent number for the Hayashi et al. reference is U.S. Patent No. 6074097.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137, and 142-147 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belmont et al. (US 6327754 B1) in view of Stolmeier et al. (US 6257763), and in further view of Herrington, Jr. et al. (US 5131121), Buchman (US 6287001), Morgan (US 5442837) and Van Erden et al. (US 4759642) and Kuge et al. (US 5364189).

Regarding claims 1, 75, 104, 125 and 144, Belmont et al. discloses a reclosable bag for filling with at least one food product comprising a single sheet of web material having first, second third and fourth edges wherein the first and second edges are located opposite each other and said third and fourth edges are located opposite each other in said single sheet of web material. Belmont also teaches a fold located intermediate the first and second edges (figure 3c, item 52). The fold results in the formation of a hood/covering element over the reclosable fastener structures. It is noted that this defines the first and second edges as the upper ends of the single sheet in figure 3c and the third and fourth edges being the sides of the bag. Belmont further teaches a reclosable fastener structure comprising two releasably engageable tracks each having a skirt structure extending therefrom (figure 3c, items 28 and 34) and being located in the fold, with the skirt structures extending toward the first and second edges (figure 3c). Both skirt structures include distal margins and each are coupled to opposite sides of the reclosable bag (column 5, line 25 to column 6, line 20). Also, Belmont teaches that the bag can be sealed at the edges and then filled through the remaining opening (column 5, lines 25 to column 6, line 20).

Claims 1, 75, 83, 104, 125 and 144 differ from Belmont in reciting that said single sheet of web material has two areas of structural weakness that are respectively located on opposite sides of the fold so that a portion of the hood can be removed to access the reclosable fastener structure, and wherein said releasably engageable tracks of said reclosable fastener structure extend above said areas of structural weakness and into said fold/hood/covering structure.

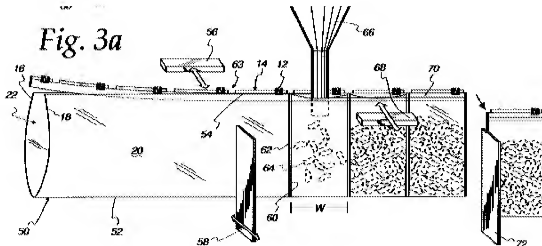
It is noted that Belmont et al. already teaches a hood/covering structure that is formed from the single sheet of web material, but appears silent as to the mechanism for providing access to the fastener structure. Thus, the claims essentially differ in providing structural elements to remove a portion of the hood/covering element and access the fastener structure, and the location of said structure for removing the hood and providing access to the fastener structure.

It is noted that Stolmeier et al., teach providing tamper evidence structures for a bag with fasteners by using a fold of web material over the fasteners such that the fasteners extend into the fold and wherein lines of weakness are on either side of the fold and between the skirt portion and the fold, such that the fastener extends above and parallel to the line of weakness into the fold structure, for the purpose of facilitating the removal of the tamper evident material, which would result in the fastener extending above the lines of weakness after removal of the fold (column 1, lines 25-57; column 3, line 30 to column 4, line 10 and figure 7 and 7b, item 72). Obviously, because of Stolmeier et al's specific arrangement of the elements, i.e. the lines of weakness, the reclosable fastener, and the fold/covering element/hood, the removal of the

hood/covering element would allow one as a result of the removal of the fold structure, to have easier access to the reclosable zipper. Furthermore, it is noted that Belmont et al. appear silent as to how the reclosable fastener is accessed but would obviously have to provide some expedient to remove at least a portion of the hood/covering element to access the reclosable fastener. Stolmeier et al. disclose both the problem and solution. That is, if one has a reclosable fastener covered by some hood/covering element, it was conventional to employ lines of weakness on the covering element to remove the covering element to access the reclosable fastener. To therefore modify the embodiment of Belmont et al. which provides a hood/covering element that covers the fasteners (figure 3c) and provide lines of weakness (i.e. perforations of a predetermined pattern) or tear path through the single sheet of web material, on either side of the fold and between the skirt portion and fold, such that the fastener extends above and parallel to the line of weakness into the fold would have been obvious to one having ordinary skill in the art, for the purpose of facilitating the removal of the hood/covering structure and for facilitating access to the reclosable fastener structures after removal of the fold.

The claims further differ in specifically reciting wherein the reclosable fastener structure has a notch located at a corner at each of side first and second ends, said notches defining where a corner portion of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed and wherein the periphery of said notches has been sealed.

Regarding the notch, it can be seen from figure 3a of the Belmont reference, indicated by the arrow, below, that the bag comprises a reclosable fastener which has a notch made therein. This can be considered a notch since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure.



It is further noted that Belmont et al. even teach cutting notches into the reclosable fastener structure (column 6, lines 45-53). Regarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard.

Nevertheless, it is noted that the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance. In this case, it can be seen that the reclosable track (19) has a notch made therein, since it is not the same length as the rest of the fastener. The ends of the fastener tracks have been fused together for the purpose of preventing the slider from falling off the end of the track (column 4,

lines 51-63). It can further be seen from figure 2 that the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15).

Kuge et al. has also been cited in figure 11, to teach wherein the reclosable fastener structure is sealed and has a notch taken therefrom.

In addition, Buchman (US 6281001) has also been cited as further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64). Buchman teaches several examples of ways to seal the ends of the web that makes the bag as well as the reclosable fastener tracks.

Nevertheless, the prior art has thus sealed the end of the web material that makes the bag and also has sealed the fastener track. Therefore, to modify the combination of the prior art and employ a fastener track which has a notch taken therefrom and then sealing the ends of the notch would have been obvious for the purpose of preventing the slider from coming off of the end of the track. Furthermore, since the prior art already teaches the concept of fusing the ends of the reclosable track structure together, the only difference between the combination of the prior art and that of the new limitation to the instant claims is the particular shape of the reclosable track structure. For instance, even Morgan (US 5442837) also appears to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it.

Since the combination of the prior art already teaches the reclosable track structure above the perforations that form the hood in the sheet of web material, such

that the reclosable / engageable tracks extend above the sheet of web material and wherein the sides of the reclosable fastener have been sealed, when the hood has been removed, the particular shape would nevertheless have been an obvious matter of choice and/or design to one having ordinary skill in the art. For instance, Van Erden et al. (US 4759642) teach a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24). Kuge et al. teach in figure 11, another type of shape to the reclosable fastener and end of the bag.

Regarding claim 142, it is noted that Stolmeier et al. teaches sealing the ends for the purpose of securing the slider on the fastener tracks (see the ends of figure 1 and column 2, lines 57 to column 3, line 7). Belmont et al. also teaches sealing the ends of the tracks and the bag, for the purpose of retaining the slider on the tracks (column 4, lines 45-63 and column 5, lines 10-25). However, the combination as applied to claims 1, 75, 104, 125 and 144 already teaches sealing the ends of the reclosable fastener tracks.

Regarding claims 2, 79, the skirt web material taught by Belmont et al. is integral to the reclosable fastener structure (figure 3c). Regarding claims 6, 82, the web material inherently has predetermined dimensions as shown by figures 3a and figure 10, and column 5, lines 50-65, for instance. Regarding claims 7, 84 and 134 it is noted that the combination of Belmont and Stolmeier, as applied above, teaches a single sheet of web material with the areas of structural weakness integral to the parent film. Regarding claims 8, 9, 85, the areas of structural weakness taught by Stolmeier et al.

are linear as shown in figure 7c, for instance and the predetermined dimension is considered the width. Regarding claims 14, 86, the lines of structural weakness extending linearly is considered a predetermined pattern. Regarding claims 18, 19 135 and 136, Belmont et al. teach a multi-laminate film, and the combination teaches wherein at least one layer would include a tear path.

Regarding claims 107, 108, 109, 110, 111, 112, 122-124, 126-128, 130, 145, 146 and 147, it is noted that the combination of Belmont et al. and Stolmeier et al. already teach that the areas of structural weakness that define a tear off fold portion that is located intermediate the areas of structural weakness, and wherein the reclosable fastener structures extend beyond the web material when the folded portion has been torn off along the lines of structural weakness. Regarding claim 132, the areas of structural weakness taught by Stolmeier et al. extend in generally parallel to the first and second fastener tracks.

2. Claims 16, 93, 131, 138, 139, 141 as rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 6-9, 14-18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137 and 142-147, above and in further view of Hayashi et al. (US 6074097).

Claims 16, 93, 139 recite wherein said areas of structural weakness comprise scoring. Although Stolmeier et al. teach lines of structural weakness, Stolmeier et al. appear silent as to whether the structural weaknesses comprise scoring. Hayashi et al. also teach reclosable food bags with an area of structural weakness (column 20, lines

10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves) (column 18, lines 31-40, Figure 10).

Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations or scoring would have been an obvious matter of choice and/or design since Hayashi et al. teach either perforations or scoring are possible and one would have been substituting one conventional area of weakness for another for the same purpose.

Regarding claims 131, 138 and 141, Belmont et al. modified by the previous combination of references is silent in teaching a line of weakness that comprises a hermetic seal or that the panels of the bag are notched. Hayashi et al. teach that it was well known in food package art (including pouches) to include tearing incisions, on the outer surfaces of films to a film-based package, and Hayashi et al. teach a particular method to form tear notches in combination with a line of weakness on the outer layer only (i.e. which would maintain the desired hermetic seal of Belmont et al.), so that the package can be easily torn (column 1, line 15 to column 2, line 8, as illustrated in figures 5a, 11 and 12). Additionally, the line of weakness can be formed by micro-perforations (i.e. "the middle part of Q's size range of 20-200 microns")(column 13, line 56 to column 14, line 28 and figure 11). Therefore, it would have been obvious to further modify Belmont et al. such that the line of weakness is hermetically sealed and that the line of weakness comprises micro-perforations and notched ends, since Hayashi et al. teach it is conventional to provide lines of weakness on the outer layer of a multilayer (i.e. preserving the hermetic seal of Belmont et al.) and provide micro-perforations in

combination with notches for the purpose of easily tearing and removing a portion of a multilayer food pouch.

3. Claim 133 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied above to claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-138 and 142-147 and in further view of May (US 5725312).

Belmont et al. teach a hermetically sealed bag, but are silent in teaching the fastener tracks being peelably and hermetically sealed. May also teaches food bags made from two panels with a reclosable fastener and further teaches the panels comprise a multi-laminate film with a tear path and a peelable seal between the two tracks (figures 3, 4, 7, , 11 and 12; column 15, lines 25-60). The peelable seal between the reclosable fastener tracks, is hermetically seal the bag that is easily broken by the consumer (Figures 19-21; column 22, lines 15-59; column 23, lines 30-47; column 1, lines 35-36; column 3, lines 10-15). Therefore, it would have been obvious to include a peelable seal between the fastener tracks, since May teaches a peelable seal, in combination with the fastener structure for the purpose of providing a hermetic seal for the food in the bag, as desired by Belmont et al., that can still be easily broken by the consumer. Such a modification would have assured a hermetic seal for the food even in the event that the tamper evident fold section was removed.

4. Claim 140 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, 6-9, 14-18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-138 and 142-147 in further view of Boeckmann et al. (US 4846585).

Belmont modified by the previous combination of references is silent in teaching a tear tape adjacent to at least one of the areas of structural weakness. Boeckmann et al. teach food bags with reclosable fasteners with a tamper evident area of perforation. In order to maintain a hermetically sealed environment, Boeckmann et al. provide a tear tape adjacent the perforation lines (column 1, line 5 to column 2, line 17; column 3, lines 23-48). Therefore, it would have been obvious to further modify Belmont et al. and include a tear tape adjacent the lines of perforation, since Belmont et al. teach a hermetically sealed bag and Boeckmann et al. teach that tear tapes placed adjacent to the perforation lines of a reclosable food bag would seal the perforation lines and maintain a hermetically sealed environment.

(10) Response to Argument

- On pages 17-19 of the Appeal Brief, appellants provide a brief summary of the references relied on to reject the independent claims.

Regarding the Belmont et al. reference, appellants note that

The Belmont et al. reference teaches folding a web of packaging to form a bag. (See FIG. 3c, Reference Nos. 50 and 52.) There are no areas of weakness in the portion of the bag including the fold. A fastener 14 with slidably mounted

slider 12 is positioned and sealed to one side of the bag. (See FIG. 3c and column 4, lines 36-40.) The fastener 14 is illustrated in FIG. 4, where fins 28 and 34 are joined to the walls 16 and 18. The side of the bag is then sealed, product is placed into the opening, and the walls 16 and 18 are sealed together at the mouth 74, completely sealing the bag. Notch 63 is a discontinuity between the fasteners 14 of adjacent bags, however, the fin portions 28 and 34 (See FIG. 4) continue past the fasteners 14, remaining connected through to the subsequent bag. Because the bags are already completely sealed at this point, the Belmont et al. reference does not teach or suggest sealing the periphery of the notches. The configuration taught by the Belmont et al. reference results in a bag which must be unzipped, and further, a user much reach down below the zipper and attempt to tear apart fin portions 28 and 34, the fin portions inaccessibly located just as in many previous resealable bags, to access the contents of the bag.

Appellants appear to indicate that on column 4, lines 36-40 and based on figure 4, where the fins 28 and 34 are sealed to the walls 16 and 18, that the bag has already been completely sealed and thus does not teach or suggest sealing the periphery of the notches. It is noted however, that sealing the fins 28 and 34 to the walls 16 and 18 does not necessarily mean that the fins are sealed to each other. On column 6, lines 27-37 it is noted that Belmont et al. teaches that the two fin portions, 28 and 34 do not have to be joined to each other. Furthermore, requiring the user to reach below the zipper to break a tamper evidence seal (38) does not teach away from sealing the ends of the bag and the notch, as discussed in the rejections above and as further detailed in the response to appellants' arguments, below.

Regarding the Stolmeier et al. references, appellants note that

The Stolmeier et al. reference teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 which constitute the material of the bag) over a reclosable closure 70. The hood of the

Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. FIGS. 7 and 7A particularly illustrate the separate pieces that must be used and attached to the bag to form the tamper evident sheet 60. FIGS. 8-15 again illustrate that closure 40, which resides inaccessibly below the zipper portion, must be ruptured before a user can access the contents of a bag. (See column 3, lines 29-67.)

It is noted that the Stolmeier et al. reference was relied on to teach the concept of providing a tamper evidence enclosure (i.e. hood) that encompasses the reclosable fastener and which further provides lines of structural weakness therein for the purpose of facilitating removal of the hood and thus providing access to the zipper, which thus extends out over the bag. Stolmeier et al. has been further relied on to teach that it has been conventional in the art to position the lines of structural weakness below the reclosable zipper structure, such that when the hood is removed, the reclosable zipper extends above the bag. Appellants' urgings with respect to the closure 40 in figures 8-15 of the Stolmeier et al. reference appear irrelevant since figure 7 and 7A of Stolmeier et al. already teach a hood/covering element around a reclosable fastener element which further includes lines of weakness to remove the hood/covering element and thus provide access to the reclosable fastener structure.

Regarding the Kuge et al. reference, appellants note that

The Kuge et al. reference teaches a zippered gusset bag with a seal over the top and partially extending down the sides of the bag. In one embodiment, the sides are sealed and portions are then cut out of the sealed portion to provide inwardly recessed portions. (See column 6, lines 54-63.)

It is noted that Figure 11 of the Kuge et al. reference has been relied on to teach the ends of the bag and the zipper have been sealed closed and further that the reclosable fastener has been "notched" such that its width is shorter than the width of the bag.

- On page 20-21 of the Appeal Brief, appellants urge that

"The Belmont et al. reference was cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag that includes the fold. To attempt to overcome this deficiency, the Examiner added the Stolmeier et al. reference to the Belmont et al. reference to teach placing a hood formed of a tamper evident sheet 60 that is completely separate from the side walls 11 and 13 that constitute the material of the bag over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggested that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference. In so doing, the separate hood would be entirely eliminated. "

This argument has been considered but is not persuasive. It is noted that Belmont et al. already teaches the concept of a hood (figure 3c), into which has been placed a reclosable fastener structure that can include a slider element, as well. It would have been obvious to one having ordinary skill in the art that one would have to provide some integral or external (i.e. scissors) mechanism for opening or removing at least a portion of a hood/covering element of the single sheet of web material, for the purpose of being able to access the reclosable fastener track and thus the contents within the bag, without destroying the bag, which would thus render the reclosable fastener for the bag irrelevant. Stolmeier et al. teaches that it was conventional to

provide a "hood" over a reclosable fastener track and then position a mechanism for facilitating removal of the hood, below the reclosable fastener tracks. Obviously, such a modification would have resulted in improved access to the reclosable fastener tracks. Also, it is noted that Stolmeier et al. thus teach that placing perforations below the reclosable fastener tracks has been a conventional location for placing lines of structural weakness for facilitation removal of the hood. To therefore modify Belmont et al., who already teach a hood that is formed from the single sheet of web material and place lines of structural weakness at the positions taught by Stolmeier et al. would therefore have been an obvious matter of choice and/or design as well as for facilitating improved access to the zipper and the contents therein.

- Further on page 21 of the Appeal Brief, appellants urge that

The Belmont et al. reference was also cited as allegedly teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it [sic] is not the same length as the rest of the fastener structure." September 5, 2008, Office Action, page 4, line 17 to page 5, line 3. The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure, which is expressly claimed in Claim 1: "wherein the periphery of said notches has been sealed" The Examiner has also overlooked the fact that the embodiment in which this feature is shown has no hood. The Examiner has combined two different elements from two different embodiments, one shown in FIG. 3a and one in FIG. 3c. To overcome these deficiencies, the Examiner added the Herrington, Jr. et al. reference, which was cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure that does not include notches.

Claim 1 also states, among other limitations,

wherein said reclosable fastener structure has a notch located at a corner at each of said first and second ends, said notches defining where a corner portion of said reclosable fastener structure that includes an end portion of said

releasably engageable tracks has been removed, and wherein the periphery of said notches has been sealed.

Appellants submit that, when properly combined, none of the references cited by the Examiner teach or suggest these limitations.

These arguments have been considered but are not persuasive. It is initially noted that the claims are directed to a particular product and not the process of making that product. In any case, it is noted that Belmont et al. specifically teach making notches in the reclosable fastener structure (column 6, lines 45-53) and as shown in figure 3a. Although figure 3a is directed to the embodiment where the fastener structure does not necessarily comprise a hood, it is noted that the figure was only relied on to show the particular structure of the reclosable fastener. This same reclosable fastener would have been applied to any of the embodiments of figures 3b-3d, as evidenced by the fact that they are, at least, indicated by the same item numbers in the figures. It is further noted that on column 3, lines 12-22, all three embodiments in figures 3b-3d are assembled using a form, fill, seal process using the fastener structures shown in figures 4-5 (column 6, lines 17-35). To therefore take this fastener structure and secure it into the single sheet of web material as taught by figure 3c would therefore have been obvious to one having ordinary skill in the art, for the purpose of including an additional tamper evidence element, such as a hood.

Nevertheless, regarding sealing the ends, it is noted that even Belmont et al. teach that it was desirable to seal the ends of the track for the purpose of retaining the slider on the track (column 4, lines 45-63 and column 5, lines 10-25). Nevertheless, even Stolmeier et al. teach the ends being sealed (see the ends of figure 1 and column

2, lines 57 to column 3, line 7), as does Herrington et al. in figure 1a, for instance. In this figure, it can be seen that the reclosable track (19) comprises a notch, since the top portion of the track (9) is not the same length as the bottom portion (30a). Furthermore, the ends of the fastener tracks have also been fused together for the purpose of preventing the slider from falling off the end of the track (column 4, lines 51-53). Therefore, it has been a conventional technique to seal the ends of the reclosable fastener track for the purpose of preventing the slider from falling out. To therefore seal the ends of the notched track taught by Belmont et al. would therefore have been obvious for its art recognized purpose of preventing the slider from falling off the tracks.

The reference to Kuge et al. further evidenced wherein the reclosable fastener structure is sealed and has a notch taken therefrom (as seen by the different in length between the bottom of the bag and the portion comprising the reclosable fastener. In addition, Buchman (US 6281001) has also been cited as further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64). Buchman teaches several examples of ways to seal the ends of the web that makes the bag as well as the reclosable fastener tracks. Even Van Erden et al. teach cutting the reclosable fastener structure, as shown in figure 2 (see the fasteners 18 sealed at item 24 and column 2, line 40-47 and column 3, lines 26-31) Morgan et al. has been relied on as further evidence of this concept.

- On pages 22-23 of the Appeal Brief, appellants urge that,

The Appellants respectfully submit that the Examiner's rejections are further deficient. Claim 1 specifically recites that "said releasably engageable tracks of said reclosable fastener structure" extend "past said areas of structural weakness and into said fold structure."

The Belmont et al. reference was cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include ~ areas of weakness in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 1, because there simply are no areas of structural weakness in the Belmont et al. reference near the fastener. In fact, as the Examiner concedes, there are no areas of structural weakness disclosed throughout the reference. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the areas of structural weakness and into the fold structure because these simply do not exist in the Belmont et al. reference.

To overcome this limitation, the Examiner combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with areas of weakness below a fastener structure. However, because the areas of structural weakness are specifically required by Claim 1 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60 and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would not do this, since it would require radical changes in the construction of both the Belmont et al. reference and the construction of the Stolmeier et al. reference.

This argument has been considered but is not persuasive, for the reasons given above with respect to appellants' arguments on pages 20-21 of the Appeal Brief. It is noted that Belmont et al. already teach providing a hood from the same sheet of web

material used to make the rest of the bag. Belmont et al. appears silent as to the particular method by which this hood portion that encloses the reclosable fastener is removed. Nevertheless, Stolmeier et al. teaches a conventional expedient for removing a portion of web material to provide access to the reclosable fastener structures: Stolmeier et al. teaches providing lines of structural weakness, which are positioned below the reclosable fastener structure such that the removal of the hood would result in completely exposing the reclosable fastener structure. The advantage of providing structural weaknesses to facilitate removal of a portion of web material from a bag has thus been conventional in the art. To thus modify Belmont et al. and place the lines of structural weakness below the reclosable fastener tracks so that upon removal of the hood the tracks extend above the remaining bag would thus have been an obvious matter of choice and/or design which would obviously have resulted in easier access to the reclosable tracks.

Furthermore, it is noted that the fact that Belmont et al. appears silent in employing perforations does not make it impossible for the fastener of the Belmont et al. reference to extend beyond areas of structural weakness and into the fold structure. It is noted that the concept of providing perforations to remove a sheet of web material for facilitating removal or tearing has been a conventional concept in the art. The particular location of those areas of structural weakness are further taught by Stolmeier et al. to be located below the reclosable zipper. Therefore, to add perforations or any lines of structural weakness for facilitating opening of the bag of Belmont et al., which in figure 3c, clearly requires the top portion thereof to be removed, as taught by Stolmeier et al.

to be located below the reclosable zipper structure, would therefore have been obvious to one having ordinary skill in the art, for the purpose of facilitating tearing without having to employ a knife or scissors, for instance.

- On pages 23-24 of the Appeal Brief, appellants urge that

It is also worth noting that wall panels 16 and 18 of the web 52 of the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be untenable with a perforation at the close location of the Belmont et al. reference, since the high speed manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why the embodiment of both the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

This argument has been considered but is not persuasive. It is noted that the claims are not directed to the process by which the bags are made but rather, only to the structure. Since Belmont et al. appear silent as to the particular mechanism for facilitating removal of the hood, appellants urging of the perforations being torn during the process of creating the top seals 54 and 70 of the bags taught by Belmont et al. is not convincing and appears to be speculative of the particular process by which one would make the bag. It is noted that the ordinarily skilled artisan could presumably score the bag at different points during the manufacturing process or could have used a process other than a high speed manufacturing process or even various other methods

for scoring that would have overcome appellants' urged drawbacks. Since Belmont already teaches a hood element that is unitary with the rest of the web material for the bag, and since Stolmeier et al. teach the claimed location for the structural weakness, it is noted that to make a bag from a unitary sheet and provide the claimed location for the structural weakness, as taught by Stolmeier et al. would have been obvious to one having ordinary skill in the art.

Furthermore, it is noted that if Stolmeier et al. recognized containing the perforations well away from the bottoms of the fastener members, then the presumed problem of providing a perforation in a hood structure, as urged by appellants, has already been recognized by the prior art and has also been solved by the prior art, by locating the points of attachment of the element containing the perforations away from the bottom of the fastener members.

- On pages 24-25 of the Appeal Brief, appellants urge that

One of ordinary skill in the art would not be compelled to look to combine the Belmont et al. reference with the portions of any of the references cited by the Examiner to allegedly teach sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, since the Belmont et al. reference is already completely closed and thus does not require sealing. This also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in Claim 1 the present application. The notch 63 in the Belmont et al. reference is actually only a portion of the fins 28 and 34 projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal.

This argument has been considered but is not deemed persuasive. It is noted that Belmont et al. already teaches that the ends of the fastener tracks require sealing for the purpose of preventing the slider from falling off the tracks (column 4, lines 45-63 and column 5, lines 10-25). Regarding the notch, it is noted that since the reclosable track taught by Belmont et al. is shorter in width than the fins 28 and 34, and since the fins are what are used to seal the reclosable track to the sheet of web material, that Belmont et al. does teach a notch made in the corner at each of the first and second ends of the reclosable fastener structure. The secondary references to Herrington Jr., et al., Kuge et al., Buchman, Morgan and Van Erden et al. further emphasize the concept of sealing the ends of the reclosable fastener track and cutting a notch in the fastener track which is subsequently sealed.

- Further on page 25 of the Appeal Brief, appellants urge that

One ordinarily skilled in the art would not look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to combine with a bag that does not need to be sealed like the Belmont et al. reference. There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

This argument has been considered but is not persuasive for the reasons given above, with respect to appellants' arguments on pages 21-22 of the Appeal Brief as well as with the reasons given above with respect to appellants' arguments on pages 24-25, above.

- On pages 25-26 of the Appeal Brief, appellants urge that,

Moreover, Claim 1 requires:
wherein said reclosable fastener structure has a notch located at a corner at each of said first and second ends, said notches defining where a corner portion of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed, and wherein the periphery of said notches has been sealed.

Emphasis added. As is clearly illustrated in FIG. 7 (portion illustrated below) and in Claim 1, a corner portion of the fastener structure has been completely removed in the present invention. Therefore, the fastener structure does not extend across the portion 10b. The notch 22a left by the missing corner is sealed at 22b. The sides of the bag are sealed along the margin 10c so that the fastener structure does not extend to the margin 10c. None of the references cited by the Examiner disclose a notch with a sealed periphery as required by Claim 1 of the present application.

The Examiner cites no less than six references in an attempt to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." However, Claim 1 of the present invention requires more than just sealing the end of the reclosable fastener track. Claim 1 instead requires an entire notch, as disclosed in the specification of the current application, and that the periphery of that notch be sealed, not just a seal located at the end of the reclosable fastener track. This results in a claim that is not fairly taught or suggested by the cited prior art.

This argument has been considered but is not deemed persuasive. It is noted that Belmont et al. also teach wherein the fastener structure does not extend across a

portion of the width of the bag which would also have included the skirt structure of the reclosable fastener structure. Regarding the sealing, as discussed above, it is noted that Belmont et al. desires the ends to be sealed and prevent the slider from falling off and Van Erden et al., Herrington Jr., et al., Kuge et al. and Morgan teach sealing the end of the reclosable fastener structure. Van Erden et al., Herrington Jr. et al. further teach the concept of cutting off portions of the fastener structure and sealing the ends thereof, and Buchman teaches sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64). For instance it is noted that Van Erden et al. teaches providing seals which thus close off the cut portions of the sheet of web material and the reclosable fastener track (figure 2, item 24, for instance and column 3, lines 23-26), which teach that the chamfer seals and side seals can be produced at the same time, thus sealing the bag and the cut off portions of the fastener track at the same time. Buchman also teaches a sealed region at the edge of the reclosable fastener which also includes the edge of the bag (column 3, lines 48-64). Kuge et al. also teach sealing the edge of the bag as well as the reclosable fastener structure (see figure 11, for instance). It is noted that since Belmont et al. already teach the claimed notch, that it would have been further have been obvious to have sealed the ends of the notched portions as taught by the secondary references discussed above, to prevent the slider from falling off. Also, it is noted that since Belmont et al. teaches a bag having tamper evidence features and is used to seal a food product therein, it would further have been obvious to ensure that the bag provides a sealed enclosure and thus to seal any as well as for the purpose of providing a sealed enclosure for holding foods therein.

Regarding the number of references, it is noted that, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. Furthermore, where teachings relied upon to show obviousness were repeated in a number of reference, the conclusion of obviousness was strengthened. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). Furthermore, it is noted that once the claimed notch structure was taught by the references, the particular method for sealing the notch structure, as taught by the secondary references would have been obvious to one having ordinary skill in the art, for its art recognized purpose of preventing the slider from falling out of the track.

- On page 27 of the Appeal Brief, appellants urge that

The Examiner specifically cited this portion (column 4, lines 51-63) of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a notch, as required by Claim 1 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 1 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 1 of the present application.

This argument has been considered but is not persuasive. It is noted that Herrington Jr., et al. teach wherein the reclosable fastener structure has a portion taken out, as shown by the difference in length between figure 1a, item 9 and figure 1a, item

30a. Nevertheless, the end of the reclosable fastener structure has been sealed for the purpose of preventing the slider from being removed from the end of the track.

Regardless of the particular structure of the notched portion taught by Herrington, Jr. et al. it is noted that Belmont et al. already teaches the notch as disclosed by appellants, and the Herrington, Jr., et al., Kuge et al., Buchman teach sealing the ends of the track for the similar purpose of securing the slider. Van Erden et al. teach sealing the ends that include the cut portion of the reclosable fastener track for the purpose of closing the sides of the bag.

- On page 28 of the Appeal Brief, appellants urge that

The Kuge et al. reference teaches forming a thick seal along the side of a bag and slicing off the outer portion of the side of the bag to form a bag with the upper portion of its sides narrower than the rest of the bag body. This is completely different than the notch with the sealed periphery required by Claim 1. The Kuge et al. reference does not teach a notch as required by Claim 1 of the present application.

It is noted however, that item 30 of figure 11 of the Kuge et al. reference is a reclosable fastener whose width is shorter than the width of the bottom portion of the bag. Also, this portion has been sealed closed, as evidenced by item 28b (column 4, lines 29-35 and line 43-44).

- Further on page 28 of the Appeal Brief, appellants urge that

The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 1. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

As discussed above, it is noted that Buchman has been relied on as further evidence of the concept of forming a seal along the edge of the bag, which includes the reclosable fastener, for the purpose of preventing the slider from falling off. As discussed above, Belmont et al. already teach the claimed notch and to therefore seal the notch to prevent a slider from falling off, would therefore have been obvious to one having ordinary skill in the art, for its art recognized function. Appellant makes a similar argument with respect to the reference to Morgan, however, it is again noted that Morgan primarily teaches the concept of sealing the ends of a reclosable fastener structure. Regarding the reference to Van Erden et al., appellants again make a similar argument as discussed above with respect to Kuge et al., Buchman and Morgan. It is noted however, that Van Erden et al. teach cutting the reclosable fastener at an angle (see figure 2) and sealing the fastener and side of the bag (figure 2, item 23 and 24). Nevertheless, Van Erden et al. has been relied on to teach the concept of cutting the reclosable fastener structure into a particular shape and further sealing both the reclosable fastener and the end of the bag.

- On page 30 of the Appeal Brief, appellants urge that

Dependent Claims 2, 6-9, 14, 16, 18, and 19, dependent from independent Claim 1, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 1, 2, 6-9, 14, 16, 18, and 19 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous, and must be reversed.

It is noted however, that appellants arguments regarding the primary rejection and thus independent claim 1 are not persuasive for the reasons given above and therefore, appellants' arguments with respect to the dependent claims are not persuasive.

- On pages 30 to 61 of the Appeal Brief, regarding independent claims 75, 104, 125 and 144 appellants essentially make the same urgings as that were made with respect to independent claim 1. Therefore the examiner's responses with respect to appellants' urgings in regards to independent claim 1 are repeated herein to address these same urgings with respect to independent claims 75, 104, 125 and 144.

Appellants arguments with respect to independent claims 75, 104, 125 and 144 are not persuasive for the reasons given above in response to appellants arguments on pages 20-29 of the Appeal Brief regarding independent claim 1.

- On pages 62-63 of the Appeal Brief, regarding the rejection of claims 16, 93, 131, 138, 139, 141; the rejection of claim 133 and the rejection of claim 140, appellants

urge that these dependent claims are patentable as dependent from an allowable claim. Nevertheless, appellants' arguments with respect to these claims is not persuasive for the reasons given above in response to appellants arguments on pages 20-29 of the Appeal Brief.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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